

**SECOND AMENDMENT TO COOPERATIVE
AGREEMENT BETWEEN
THE UNITED STATES OF AMERICA AND
THE CITY OF HAMPTON, VIRGINIA**

This Second Amendment to Cooperative Agreement (“**Second Amendment**”) is made between **THE UNITED STATES OF AMERICA** (the “**United States**”), acting by and through the **SECRETARY OF THE AIR FORCE** (the “**Air Force**”), and **THE CITY OF HAMPTON, VIRGINIA** (the “**Eligible Entity**”). The Air Force and Eligible Entity are sometimes collectively referred to as the “**Parties**”, or each may be referred to as a “**Party**”, in this Second Amendment.

WITNESSETH:

WHEREAS, the Parties entered into that certain Cooperative Agreement Between the United States and Eligible Entity, dated July 2, 2015 (hereafter referred to as the “**Agreement**”);

WHEREAS, the Parties entered into that certain First Amendment to Cooperative Agreement Between the United States and Eligible Entity, dated September 29, 2016 (the “**First Amendment**”);

WHEREAS, the Agreement and First Amendment have served and continue to serve as the basis for the obligation of funds appropriated for the purpose of carrying out the Agreement as provided in Sections 102, 202.b, 203, 204, and Article III, provides that the Air Force notify the Eligible Entity when funds are available to be obligated, and, as such, the Parties hereby amend the Agreement to further detail and extend its terms to incorporate the actual funding amounts for fiscal year 2018 (“**FY18**”) as set forth herein;

WHEREAS, the Parties have agreed that acquiring Real Property Interests depicted within Exhibit A and Exhibit C of the Agreement continue to support the public purposes of the Agreement as set forth in Section 102; and

WHEREAS, the Parties desire to expand the parcels of property as provided herein that continue to support the public purpose of the Agreement, and desire to amend the Agreement to identify such parcels.

NOW THEREFORE, for and in consideration of good and valuable consideration, mutual covenants and promises of the Parties contained herein, the receipt and sufficiency of which are hereby acknowledged, the parties agree to this Second Amendment as follows:

1. The above recitals are true and correct.
2. “Attachment B-2” is hereby added and attached hereto.

3. "Attachment C-2" is hereby added and attached hereto.

4. Section 201.a. is hereby deleted and replaced with the following:

The Air Force and Eligible Entity Agree to cooperate in limiting development that is incompatible with mission(s) of the Installation, to protect open space and agricultural uses around or near the Installation by acquiring Real Property Interests in certain lands located in the vicinity of the Installation or military airspace, or those which are ecologically related to the installation, in the City of Hampton, Virginia. This Agreement in no way restricts the Air Force or the Eligible Entity from participating in similar activities with other public or private entities or persons. The subject properties identified by the Air Force and Eligible Entity for acquisition are depicted in Exhibits A-C, including any additional attachments to such Exhibits.

5. Section 202.c. is hereby deleted and replaced with the following:

It is understood and agreed between the Parties hereto that the Eligible Entity's acquisition of Real Property Interests, and any subsequent transfer of Easements to the Air Force in accordance with this Agreement, is subject to appropriation of sufficient funds by the Eligible Entity's governing body. In the event sufficient funds are not appropriated and budgeted, the Eligible Entity shall notify the Air Force of such occurrence and either Party may terminate the Agreement in writing without penalty or expense to the other.

6. Section 204.c. is hereby deleted and replaced with the following:

The amount of the actual contribution of the Air Force toward acquisition of the Easements will be negotiated by the Parties. The Eligible Entity agrees to purchase (and retain as described in Section 202) the Property in fee simple and subsequently transfer the development rights in the form of the Easements described in Section 201 in a manner consistent with the Agreement. At no time may the amounts contributed by the Air Force exceed the fair market value of the interest transferred to the Air Force as per 10 U.S.C. 2684a (d)(4)(C). The Eligible Entity will not convey an entire fee interest nor expect the Air Force to pay the appraised fair market value of the entire fee acquired. When negotiating the actual contribution of funds for the acquisition, the Parties must, if not already addressed in the Agreement, agree on the amounts that will be used for the acquisition of the Easements and the amounts that will be used for the related Allowable Transaction Costs.

7. Section 204, Acquisition Process, is hereby modified to include a new subsection "i", as follows:

In the event a landowner of the properties depicted in Exhibits A-C, including any additional attachments, refuses to accept the final offer of the Eligible Entity, the Parties agree to pursue other Real Property Interests within the Land Use Compatibility Area of Concern depicted

within Exhibit A of the Agreement. An Amendment to the Agreement to more specifically identify any additional parcels within the Land Use Compatibility Area of Concern that continue to support the public purposes of the Agreement will be required prior to the use of any contribution funds of the Air Force for the acquisition or Allowable Transaction Costs of the acquisition for such property.

8. Section 207, Title Insurance, is hereby deleted and replaced with the following:

The Eligible Entity shall acquire two title insurance policies: one (1) title insurance policy for its fee simple interest in the subject Property, and one (1) additional title insurance policy, on behalf of the Air Force, insuring the Air Force Easement interest in the Property. In accordance with the Regulations of the Attorney General Governing the Review and Approval of Title for Federal Land Acquisitions, the title insurance policy having the United States of America as a named insured will use form ALTA U.S. Policy 9-28-91 (Revised 12-3-12) for the interest(s) conveyed to the United States. The Air Force will cooperate with the Eligible Entity to provide all such information and authorizations necessary for the Eligible Entity to obtain the title policy covering the Air Force Easement interest. A copy of both title insurance policies shall be delivered to the Air Force upon conveyance of the subject Easements to the Air Force.

9. Section 301.b. is hereby deleted and replaced with the following:

The Air Force agrees to make available FY18 contribution funds of SEVEN HUNDRED TWENTY THREE THOUSAND THREE HUNDRED SIXTY DOLLARS (\$723,360) toward the acquisition of the Easements over the properties to be acquired by the Eligible Entity depicted and identified in Exhibits A-C, including any additional attachments, subject to the limitations and requirements provided in Section 202.b., Section 203 and Section 304. At no time may the amounts contributed by the Air Force for a specified property exceed the fair market value of the interest transferred to the Air Force.

10. Section 304, Funding Limitations, is hereby modified to include a new subsection “e”, as follows:

The Government will obligate funds and authorize payments or expenditures consistent with all normal limitations on the use of applicable appropriated funds, e.g., period of availability (purpose, time (*Bona Fide* Needs Rule, as applicable), amount); definite and certain obligation; type of funds. No provision in this Agreement should be interpreted to require the Government to obligate funds and authorize payment or expenditure of funds in violation of the Anti-Deficiency Act, 31U.S.C § 1341, or other applicable Federal law.

11. Section 501, Term of Agreement, is hereby modified as follows:

Delete “whichever is earlier” and replace the “;” with a ‘.’ at end of paragraph.

(SIGNATURES ARE ON THE NEXT TWO PAGES.)

IN WITNESS WHEREOF, the Parties hereto by their duly authorized representatives have caused this Second Amendment to be executed in their names as of the day and year indicated below.

“Air Force”

THE UNITED STATES OF AMERICA, acting by and through THE SECRETARY OF THE AIR FORCE

By: [Signature]
ROBERT E. MORIARTY, P.E.
Director, Installations Directorate

ACKNOWLEDGMENT

STATE OF TEXAS §

§

COUNTY OF BEXAR §

This instrument was acknowledged before me on September 17th, 2018, by ROBERT E. MORIARTY, personally known to me to be the Director, Installations Directorate of the Air Force Civil Engineer Center.

[Signature]
Notary Public, State of Texas

Printed Name
S. V. Leslie

Commission Expiration Date
12.30.2019



THE CITY OF HAMPTON, VIRGINIA

By: Mary B. Buntney
Its: City Manager
Date: 8/1/18

Approved as to Legal Sufficiency:

Approved as to Content:

Bonnie Brown
Senior Assistant City Attorney

Burns
Director of Federal Facilities Support

ATTEST: [Signature]
Clerk

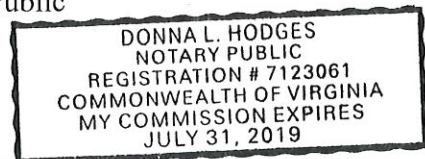
COMMONWEALTH OF VIRGINIA
CITY OF HAMPTON, to-wit:

On the 1st day of August, 2018, before me, Mary B. Buntney, the undersigned notary, personally appeared Mary B. Buntney, personally known to me to be the person whose name is subscribed to the foregoing instrument, personally known to me to be the (Title) City Manager, and acknowledged that the same was the act and deed of the City of Hampton, Virginia, and that he/she executed the same as the act of the City manager (Title) for the purposes and consideration cited therein.

Given under my hand this 1st day of August, 2018.

Donna L. Hodges
Notary Public

My commission expires: July 31, 2019
Notary Registration Number: 7123061



ATTACHMENT B-2

AR:

PIN/LRSN/RPC #6000854 – GIS Acreage: 8.4 – Assessed Value: \$424,500

Property Address: 3101 Commander Shepard Blvd
Hampton, VA 23666

Mailing Address: 13490 Benns Church Road
Smithfield, VA 23430

BR:

PIN/LRSN/RPC #6000857 – GIS Acreage: 4.59 – Assessed Value: \$346,500

Property Address: 3201 NASA Drive
Hampton, VA 23666

Mailing Address: P.O. Box 41
Hampton, VA 23669

CR:

PIN/LRSN/RPC #6000850 – GIS Acreage: 17.73 – Assessed Value: \$582,600

Property Address: Commander Shepard Blvd
Hampton, VA 23666

Mailing Address: 1071 R. Wranglers Trail
Pebble Beach, CA 93953

DR:

PIN/LRSN/RPC: 6000760 – GIS Acreage: 1.58 – Assessed Value: \$19,300

Property Address: Tidewater Drive
Hampton, VA 23666

Mailing Address: P.O. Box 237
Hampton, VA 23669

ER:

PIN/LRSN/RPC: 6000761 – GIS Acreage: 1.96 – Assessed Value: \$28,000

Property Address: Tidewater Drive
Hampton, VA 23666

Mailing Address: 9314 Warwick Blvd
Newport News, VA 23601-4523

FR:

PIN/LRSN/RPC: 6000811 – GIS Acreage: 7.01 – Assessed Value: \$177,100

Property Address: 60 Nettles Lane
Hampton, VA 23666

Mailing Address: 38 Little Florida Road
Poquoson, VA 23662

ATTACHMENT C-2

